IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1660 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PALLAVIBEN JASHWANTRAI SHETH

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioners

MR UA TRIVEDI for Respondent No. 1

MS AMY YAJNIK for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 09/02/2001

ORAL JUDGEMENT

#. The petitioner, the original accused in the Criminal Case No.154/1994 filed in the Court of Learned Judicial Magistrate First Class Pardi, has moved this Court under

Article 226 of the Constitution of India praying for a writ of mandamus or an appropriate direction preventing investigation by Vapi Police Station in M Case No.28/1994 as also to set aside the proceeding pursuant to the said case.

#. It appears that the respondent no.2, the original complainant, has filed the aforesaid complaint for the alleged offences under Sections 420, 504, 506(2) and 114 of I.P.C. on 14.10.1994, and the same appears to have been forwarded to the Police Station wherein it is registered as FIR under Section 154 of Criminal Procedure Code. It is contended on behalf of the petitioners that the advancement of loan by the complainant to the deceased husband of the petitioner no.1 in the year 1987 as alleged in the complaint was based on a promissory note dated 1.4.1987 which was forged and fabricated. It is further submitted that the factum of such alleged advancement of loan as well as the incident of threat as alleged in the complaint are not true but concocted with a view to pressurize and harass the petitioner. It is, therefore, submitted that the Learned Judicial Magistrate ought to have applied his mind and ought not to have forwarded the complaint for police investigation as, in any case, the police had nothing to investigate in view of the fact that all the necessary evidence could have been produced and proved by the complainant himself. The hearing of this petition was adjourned from time to time in view of report that the learned counsel for the original complainant was not available in India and fresh service of rule was ordered. However, the original complainant has chosen not to remain present either in person or through a pleader.

#. As held by this Court in Suresh Kumar Gupta Vs. State of Gujarat & Anr. 1997 (2) G.L.H. 356, every magistrate should record an order disclosing the reason why he needs investigation under Section 156(3) of the Code through police agency. In absence of any such reason, the order to direct inquiry under Section 156(3) should be treated as bad. It is further observed that the Magistrate has not to do the job of postman to order investigation as soon as the complaint is received. There is a discretion with the Magistrate as to whether to inquire by himself either before taking cognizance or after taking cognizance. It is also open to him to direct investigation under Section 156(3) before taking cognizance of the matter but when, how and in what circumstances such a discretion should be exercised is required to be borne in mind by the Learned Magistrate keeping in view the facts and circumstances of the case.

#. In the facts of the present case, in view of the allegations made in the complaint, the Learned Magistrate was required to apply his mind and come to a tentative decision whether necessary material to prove the guilt of the accused can be gathered by him without any difficulty through the complainant or was it necessary to take assistance of investigating agency. It is seen in this case that the complainant has approached the Court by way of a private complaint and all that was needed to be proved could be and had to be proved by the complainant himself. In such circumstances, following the ratio of the judgment in Suresh Kumar Gupta (Supra), the order to forward the complaint to be registered under Section 156(3) is not justified.

#. Accordingly, the petition is partly allowed and the FIR registered as M Case No.28/1994 in Vapi Police Station is set aside. The learned Judicial Magistrate First Class Pardi shall proceed afresh with the Criminal Complaint No.154/1994 in accordance with law. Rule is made absolute in terms as above with no order as to costs. Interim relief stands vacated.

(D. H. WAGHELA, J.)

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